



1       **A. The Government must disclose a source because it is helpful to the defense of Mr. Li.**

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3       The government has a limited privilege to withhold the identity of confidential informants. *See*  
4 *Roviaro v. United States*, 353 U.S. 53, 59, 77 S.Ct. 623, 627, 1 L.Ed.2d 639 (1957). “Where the  
5 disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to  
6 the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.”  
7 *Id.* at 60-61, 77 S.Ct. at 627-28. However, the Supreme Court “believes no fixed rule with respect to  
8 disclosure is justifiable.” *Id.* at 59, 77 S.Ct. at 627. The Court identified the problem as one that calls for  
9 balancing the public interest in protecting the flow of information against the individual's right to prepare  
10 his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular  
11 circumstances of each case, taking into consideration the crime charged, the **possible** defenses, the  
12 **possible** significance of the informer's testimony, and other relevant factors. *Id.* at 62, 77 S.Ct. at 628-  
13 29. (emphasis added)

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15       In practice these factors have focused on 1) whether the testimony would be “relevant and helpful” to  
16 the defendants' case, especially in terms of the relationship between the asserted defenses and the likely  
17 testimony of the informant, *see United States v. Hernandez*, 608 F.2d 741 (9th Cir.1979), which in turn  
18 will often depend on the degree of involvement by the informant in the charged crime, *see United States*  
19 *v. Tenorio-Angel*, 756 F.2d 1505, 1509 (11th Cir.1985), and 2) the government's interest in protecting  
20 the safety of an informant, *see United States v. Hernandez-Berceda*, 572 F.2d 680, 683 (9th Cir.), *cert.*  
21 *denied*, 436 U.S. 949, 98 S.Ct. 2856, 56 L.Ed.2d 792 (1978).  
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2       The Government places much emphasis on the defense's proposition that the defendant "may"  
3 use the defense of entrapment at trial and, upon the disclosure of the informant's identity the defendant  
4 "may" file additional motions to the Court. The Government takes the position that because the  
5 defendant is not "certain" about his future course of trial strategy he is therefore not entitled to disclosure  
6 of the informant's identity. That does not track well established case law in this area.

7       The Ninth Circuit reaffirmed *Roviaro's* principles in *United States v. Ramirez-Rangel*,  
8 103 F.3d 1501 (9th Cir.1997), holding that defendants have a right to learn the identity of the  
9 government's confidential informants if they show that the information "is relevant and helpful to the  
10 defense of an accused or is essential to a fair determination of a cause." *Id.* at 1505 (quoting *Roviaro*, 353  
11 U.S. at 60-61). Indeed, in *United States v. Giry*, 818 F.2d 120, 130 (1st Cir. 1987), the First Circuit  
12 recognized that it "agree[d] that the appellants cannot be expected to submit a detailed proof offer  
13 regarding a witness they have been unable to interview."

14       The showing that the defense must make to the court is that the disclosure of the identity would  
15 indeed be helpful and relevant to the defense. That showing has been made in the instant case. In this  
16 case, the snitch had a high degree of involvement in the alleged crime. According to discovery received  
17 thus far, the informant was a consumer and purchaser of methamphetamine. The snitch qualifies as a  
18 percipient witness who played an integral role in the alleged narcotic transactions at issue and could  
19 provide impeachment and exculpatory evidence towards Mr. Li's exoneration. In addition to the above  
20 requirements for disclosure, the Government must disclose information which will impeach the  
21 informant.

1        **B. The Government has not made a showing here that disclosure would be harmful to the informant.**

2        Although there may arguably be some importance in protecting the identity of informants  
 3 involved in ongoing narcotics investigations, the Government has not shown that disclosure would be  
 4 harmful to any Informant's safety or that disclosure could jeopardize ongoing and future investigations.  
 5 *Gonzalo Beltran*; see also *Smith v. Illinois*, 390 U.S. 129, 88 S. Ct. 748 18 L. Ed.2d 956(1958)  
 6 (precluding defendant accused of drugs from inquiring about informant's true name violated defendant's  
 7 sixth amendment right to confront witness against him where there was no showing that the inquiry  
 8 would have in any way endangered the witness.

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 10        **C. The Government has not made an adequate showing that warrants waiting until one week prior to trial to disclose the identity**

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 12        A defendant has the right to present a defense at trial. The Government proffers in its  
 13 opposition that if they do decide to disclose the identity, they will do so one week prior to trial, this  
 14 proposition is unacceptable. The government did not put forth any rational explanation that warrants  
 15 waiting until practically the eve of trial to disclose potentially exculpatory evidence to the defendant.  
 16 "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory  
 17 Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal  
 18 defendants 'a meaningful opportunity to present a complete defense.' " *Crane v. Kentucky*, 476 U.S. 683,  
 19 690, 106 S.Ct. 2142, 90 L.Ed.2d 636. The Government should be ordered to provide this information  
 20 substantially before trial and in a manner that allows Defendant to make effective use of the information  
 21 at trial. The Government has only complied with its obligations under *Brady* or other discovery statutes  
 22 if it provides the evidence in a timely, useful manner that allows defendant to make effective use of it at  
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1 trial.

2 Another troubling factor about waiting until the trial is merely one week away before the  
3 government will reveal the identity is that counsel for the defendant is a former Assistant Public  
4 Defender here in the CNMI. It is a very real possibility that the identity of the confidential source could  
5 present a conflict if he/she had ever been represented by the CNMI Public Defender's Office. If the  
6 Court were to allow the Government to wait until the eve of trial for disclosure and a conflict does exist,  
7 Mr. Li's right to speedy trial would be violated. Indeed, this Court must order disclosure of the  
8 informant's identity in an expedient manner.

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### **CONCLUSION**

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Defendant is entitled to disclosure of the identity of the confidential informant in order to  
prepare his cross-examination and present a defense against the charges lodged against him. Based on  
the foregoing reasons, Mr. Li respectfully moves this Court to grant his motion for disclosure.  
Respectfully submitted this 7<sup>th</sup> day of February, 2008.

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Law Office of G. Anthony Long

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